in *Bronson* v. *Kinzie,* 1 How. 311. The lower court seems to have taken the stand that the company had a right under its contract to have the action brought within six months, and that the law destroyed that right. The Supreme Court of Appeals holds, though, that where there is a positive statute saying such a clause relating to the remedy is void, courts must uphold it, even as to existing contracts. *Wooster* v. *Bateman,* 126 Ia. 552; *Sharp* v. *Sharp,* 213 Ill. 332.

CONSTITUTIONAL LAW—INVALIDATING EXISTING CONTRACTS FOR FREE TRANSPORTATION.—In 1871 Mottley and his wife received personal injuries in a railroad collision, and in settlement the Railway Company agreed to issue free passes on the said railroad and branches for the remainder of that year and thereafter to renew said passes annually during the lives of Mottley and wife, or either of them. The Railway lived up to its agreement until 1906, and then offered passes for intrastate passage, claiming it was forbidden by the commerce amendment to do more. (U. S. Comp. St. Supp. 1909, p. 1169). This law prohibited any carrier of interstate commerce from demanding, collecting, or receiving "a greater or less or different compensation for the transportation of persons or property, or for any service in connection therewith, than that specified in its published schedule of rates." The Mottleys brought suit to require the Railway specifically to execute said agreement. The Kentucky courts ruled in their favor. On appeal the United States Supreme Court *held,* that Congress in the exercise of its power over commerce could enact the provisions of the said act which rendered unenforceable this prior contract, valid when made, without infringing upon the constitutional liberty to contract. *Louisville & N. R. Co.* v. *Mottley* (1911), 31 Sup. Ct. 265.

It is now the established rule under the law that a carrier cannot depart to any extent from its published schedule of rates for interstate transportation on file without incurring the penalties of the statute. *Union P. R. Co.* v. *Goodridge,* 149 U. S. 680; *Texas & P. R. Co.* v. *Abilene Cotton Oil Co.,* 204 U. S. 426. As between the parties themselves an unliquidated claim is good consideration for a promise; but when others are interested, Congress may deny this right. *Union P. R. Co.* v. *Goodridge,* supra. The law does not except from the operation of the statute such cases as the Mottley contract, and the court cannot add an exception based upon equitable grounds when Congress forbore to make such an exception. *Yturbide* v. *U. S.* 22 How. 290. A railway cannot under the statute receive anything but money. *Armour Packing Co.* v. *U. S.,* 209 U. S. 56; *Chicago, I. & L. R. Co.* v. *U. S.,* 31 Sup. Ct. 272 But the interesting constitutional question was concerning the intent of Congress to interfere with vested rights. A riparian owner acquired the right of access to navigability subject to the contingency that the right might become valueless by the construction of a pier by the government. *Scranton* v. *Wheeler,* 179 U. S. 141. So also the rights in a bridge constructed across a navigable stream by contract with the state are subject to future acts of Congress governing navigation. *Union Bridge Co.* v. *U. S.,* 204 U. S. 364. Congress in the exercise of its powers may declare void existing contracts which directly interfere therewith, not being merely

incidental to them; and this does not infringe upon the constitutional liberty to contract, because there is no such limitation upon Congress in the exercise of its legitimate powers. *Addyston Pipe & Steel Co.* v. *U. S.*, 175 U. S 211. But the congressional act did not expressly state that such existing contracts were to be void, even though Congress has the power to do so, as seen in the foregoing cases. However, the United States Supreme Court holds squarely that the act was retrospective as well as prospective.

CONTRACTS — MUTUAL PROMISES — INDEPENDENT OR CONDITIONAL. — The Standard Rubber Company was indebted to the plaintiff, and entered into an agreement whereby The Standard Rubber Company was to give a bond with sufficient security to cover the debts that were due or to become due and the plaintiff was to extend a certain line of credit. Between the execution of the bond and the commencement of suit The Standard Rubber Company was declared insolvent and defendant was appointed receiver. Plaintiff refused to extend any further credit after the bond was given. Plaintiff now sues upon the bond and the defense is failure of the consideration for which the bond was given. *Held,* where there are mutual promises, and the time for performance by one party may arrive before the time for performance by the other, the later promise is an independent obligation, and not a condition precedent of the former, and its nonperformance does not bar an action upon the former promise. *United & Globe Rubber Mfg. Cos.* v. *Conard et al.* (1910), — N. J. L. —, 78 Atl. 203.

Whether conditions are precedent or subsequent is to be determined by the intent of the parties, as collected from the contract. *Finlay* v. *King,* 3 Pet. 346. In a case in which a land company agreed to donate to defendant manufacturing company three acres of land, and to "Promptly build or cause to be built, to the land so donated, a side track, and when" the factory was completed and in operation, to buy $2,500 worth of plaintiff's stock, all of which was conditioned on plaintiff's beginning work at once, it was held that the completion of the factory was not a condition precedent to the building of the side track. *Southern Pine Fibre Co.* v. *North Augusta Land Co.,* 53 Fed. 318, but in another case in which one party agreed to furnish supplies to another as needed for discovering and locating a lode for their joint benefit it was held the latter might treat this as a condition precedent and upon failure to furnish said supplies he might abandon the enterprise. *Murley* v. *Ennis,* 2 Colo. 300. Stipulations in contracts which are conditions precedent, are strictly construed against the one seeking to avail himself of them, and this is true when a strict construction would work a forfeiture. *Antonelle* v. *Kennedy & Shaw Lumber Co.,* 140 Cal. 309. When the performance of an agreement depends upon an act to be done by the plaintiff, the doing of such an act is a condition precedent; and the court will not inquire whether the doing of it be beneficial to the defendant. *Hunt* v. *Livermore,* 5 Pick. 395. Whenever the entire consideration of the demand claimed is stipulated to be performed at or previous to the performance of the demand, the performance of the consideration becomes a condition precedent. *Barry* v. *Alsbury,* Litt. Sel. Cas. 149.